

UNITED STATES DISTRICT COURT

for  
NORTHERN DISTRICT OF TEXAS

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

**Request for Modifying the Conditions or Term of Supervision  
With Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

2012 OCT 11 PM 12:54

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Name of Offender: James Michael Austin

Case No.: 5:04-CR-050-C(01)

Name of Sentencing Judicial Officer: U.S. District Judge Sam R. Cummings

Date of Original Sentence: November 5, 2004

Original Offense: Interstate Receipt of Child Pornography and Aiding and Abetting, 18 USC §§ 2252A(a)(2)(A) & 2

Original Sentence: 78 months custody, 36-month term of supervised release

Type of Supervision: Supervised Release

Date Supervision Commenced: July 2, 2010

Assistant U.S. Attorney: Steven M. Sucsy

Defense Attorney: David E. Sloan  
(Court appointed)

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**Petitioning The Court As Follows:**

To add to the conditions of supervision with the consent of the offender as follows:

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer conducting ongoing monitoring of his/her computer(s). The monitoring may include the installation of hardware and/or software systems which allows evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. The monitoring software may be disabled or removed at any time during the term of supervision at the discretion of the probation officer.

The defendant shall submit to periodic unannounced examination of his/her computer(s), storage media, and/or other electronic or Internet-capable device performed by the probation officer at a reasonable time and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

The defendant shall not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer.

James Michael Austin

Request for Modifying the Conditions or Term of Supervision With Consent of the Offender

The defendant shall not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.

The defendant shall not maintain or create a user account on any social networking site (i.e. MySpace.com, Facebook.com, Adultfriendfinder.com, etc) that allows access to minors under the age of 18, or allows for the exchange of sexually explicit material, chat conversations, or instant messaging. The defendant shall not view and/or access any web profile of users under the age of 18.

The defendant shall not access any service or use any software which allows for direct peer-to-peer contact which may include chat rooms, file sharing, or other similar activity without permission from the probation officer.

The defendant shall not access any Internet Service Provider account or other online service using someone else's account, name, designation, or alias.

### Cause

On July 2, 2010, James Michael Austin's term of supervised release commenced in the Northern District of Texas, Lubbock Division. A special condition of Mr. Austin's term of supervised release prohibited him from possessing or utilizing a computer or internet connection device during his term of supervised release. On March 9, 2012, Your Honor concurred with the U.S. Probation and Pretrial Services Office in modifying Mr. Austin's conditions of supervised release, authorizing him to use a computer for seeking employment at a location authorized by the U.S. Probation and Pretrial Services Office and/or to utilize a computer owned by his employer for the strict benefit of his employer in the performance of his job-related duties.

On October 1, 2012, Mr. Austin secured employment as a screen print graphic designer for Designs in Thread in Lubbock, Texas. Company officials have confirmed that Mr. Austin would be utilizing a computer for job-related purposes. Due to his anticipated extensive use of a computer, it will be necessary to install a computer and internet monitoring program on his work computer, along with imposing additional conditions that provide restrictions and safeguards to ensure Mr. Austin's appropriate use of the computer. To assist Mr. Austin in continuing his employment with Designs in Thread, it is respectfully recommended that his conditions of supervision be modified to allow installation of a computer and internet monitoring program on his work computer, along with implementation of additional conditions which provide further restrictions and safeguards for monitoring Mr. Austin's computer use.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

s/ Greg Cruz

\_\_\_\_\_  
Senior U.S. Probation Officer  
Lubbock, Texas  
806-472-1142  
Fax: 806-472-7018

Approved,

s/ Dale E. Adams

\_\_\_\_\_  
Supervising U.S. Probation Officer  
806-472-1141

James Michael Austin

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**Order of the Court:**

- ☐ No Action
- ☐ The extension of supervision as noted above.
- ☒ The following conditions be added to the offender's conditions of supervised release:

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The defendant shall submit to periodic unannounced examination of his/her computer(s), storage media, and/or other electronic or Internet-capable device performed by the probation officer at a reasonable time and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

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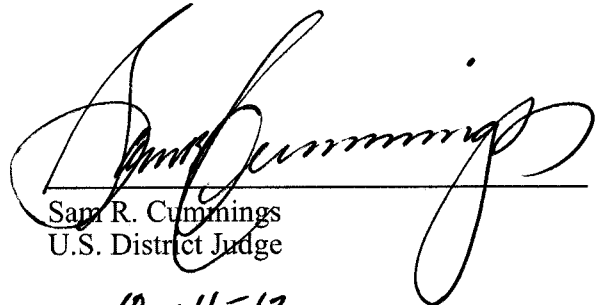
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James Michael Austin

Request for Modifying the Conditions or Term of Supervision With Consent of the Offender

- ☐ Other or Additional:
- ☐ File under seal until further order of the Court.

A large, stylized handwritten signature in black ink, appearing to read "Sam R. Cummings", is written over a horizontal line.

Sam R. Cummings  
U.S. District Judge

10-11-12

Date

GC/tlt

\*Attachment

**UNITED STATES DISTRICT COURT  
PROBATION AND PRETRIAL SERVICES  
NORTHERN DISTRICT OF TEXAS**

**Waiver of Hearing to Modify Conditions of Supervised Release  
or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Supervised Release or to the proposed extension of my term of supervision:

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer conducting ongoing monitoring of his/her computer(s). The monitoring may include the installation of hardware and/or software systems which allows evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. The monitoring software may be disabled or removed at any time during the term of supervision at the discretion of the probation officer.

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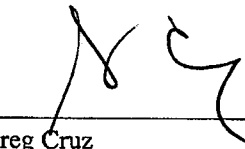
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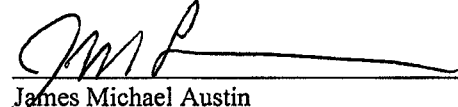
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The defendant shall not access any Internet Service Provider account or other online service using someone else's account, name, designation, or alias.

Witness: \_\_\_\_\_

  
Greg Cruz  
Senior U.S. Probation Officer

Signed: \_\_\_\_\_

  
James Michael Austin  
Supervised Releasee

9-28-2012

Date